

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. JACK R. JELSEMA
Judge, 62A District Court
Wyoming, MI 49509

FORMAL COMPLAINT NO. 71

COMPLAINT

The Michigan Judicial Tenure Commission (“Commission”) files this complaint against Hon. Jack R. Jelsema, 62A District Court Judge, serving the City of Wyoming, Kent County, Michigan. This action is taken pursuant to the authority of the Commission under Article VI, Section 30 of the Michigan Constitution of 1963, as amended and MCR 9.200 *et seq.* The filing of this Complaint has been authorized and directed by resolution of the Commission.

Respondent is, and at all material times was, a judge of the 62A District Court in Wyoming, Michigan. As a judge, he is subject to all the duties and responsibilities imposed on him by the Michigan Supreme Court, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205. Respondent is charged with violating his judicial and professional duties as set forth in the following paragraphs.

A.

1. MCR 8.107 requires that judges file in January, May, and September of each year a certified statement enumerating matters submitted for decision more than four months earlier which remain undecided.

2. Respondent did not file any of the required statements with the State Court Administrator which were due September, 2001 and January, 2002. Respondent further ignored repeated reminders of these omissions from the State Court Administrative Office, on February 20, February 28, March 6, March 22 and April 17, 2002. Respondent filed a MCR 8.107 report for May, 2002 only after the Commission advised Respondent that it had authorized a 28-day letter, pursuant to MCR 9.207(C), concerning these omissions, which would be held in abeyance for a period of 2 weeks so as to allow Respondent to comply with requirements of the court rule.

3. The conduct described in paragraphs 1-2, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- c. Failure to comply with MCR 8.107;

- d. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- f. Persistent failure to perform judicial duties or neglect in the performance of judicial duties, contrary to MCR 9.205(C)(2) and (5); and
- g. Conduct violative of MCR 9.104(1) and (2) in that such conduct:

is prejudicial to the proper administration of justice; and

exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

B.

4. The MCR 8.107 report Respondent filed for May, 2002 listed some seven matters as under advisement and awaiting decision. Those seven matters are:

- (a) *Burlingame Co. v Proctor*, Case No. 00-5144 GC;
- (b) *Dermody Truck Sales, Inc. v. Living Foods, Inc.*, Case No. 00-5152 GC;
- (c) *Precision Windows, Inc. v Norman*, Case No. 00-5539 GC;
- (d) *Hutchings v Russo*, Case No. –01-6530 GC;

- (e) *Funk v. Curt*, Case No. 01-6069 GC;
- (f) *Old Kent Bank v Marshall*, Case No. 01-6496 GC; and
- (g) *Kent Arms, Inc.*, Case No. 01-FY3370

5. On June 13, 2002, the Commission requested additional information concerning those matters under advisement and indicated Respondent's reply was due within 14 days from the date of the letter. Respondent neither submitted a reply nor requested additional time to respond.

6. The conduct described in paragraphs 4-5, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- d. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Failure to cooperate with the Commission during a preliminary investigation, contrary to MCR 9.213(B); and

- f. Conduct violative of MCR 9.104(1) and (2) in that such conduct:

is prejudicial to the proper administration of justice; and

exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

C.

7. On July 11, 2002, the Commission sent a 28-day letter to the Respondent, pursuant to MCR 9.207(C), inviting his comment to Grievance No. 02-13988, via the U.S. mail, return receipt requested. The receipt shows the letter was signed for on July 15, 2002. Respondent neither submitted a reply nor requested additional time to respond.

- 8. The conduct described in paragraph 7, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

- d. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Failure to cooperate with the Commission during a preliminary investigation, contrary to MCR 9.213(B); and
- f. Conduct violative of MCR 9.104(1) and (2) in that such conduct:
 - is prejudicial to the proper administration of justice; and
 - exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

D.

9. On June 10, 2002, John D. Ferry, Jr., State Court Administrator, informed Respondent the opinions in the seven cases listed on his May, 2002 MCR 8.107 Report must be completed and filed by June 24, 2002. Respondent neither completed the opinions nor requested additional time to work on the matters.

10. On July 18, 2002, Respondent met with James Hughes, Regional Administrator for Region II of the State Court Administrative Office, and Chief Judge Steven Timmers of the 62A District Court concerning the seven cases listed on Respondent's May, 2002 MCR 8.107 report. At that time Respondent indicated that opinions on those cases would be issued no later than Thursday, August 1,

2002. Respondent completed none of the promised opinions by that date and did not request additional time to work on the materials. As of the present date, none of the opinions have been completed.

11. The conduct described in paragraphs 9-10, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- d. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Persistent failure to perform judicial duties or neglect in the performance of judicial duties, contrary to MCR 9.205(C)(2) and (5);
- f. Failure to dispose promptly of the business of the court in violation of the Code of Judicial Conduct, Canon 3A(5); and
- g. Conduct violative of MCR 9.104(1) and (2) in that such conduct:

is prejudicial to the proper administration of justice; and

exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

E.

12. Respondent did not file the certified statement with the State Court Administrator of matters under advisement for more than four months, as required by MCR 8.107, which was due for September, 2002.

13. The conduct described in the paragraph 12, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- c. Failure to comply with MCR 8.107;
- d. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- f. Persistent failure to perform judicial duties or neglect in the performance of judicial duties, contrary to MCR 9.205(C)(2) and (5); and
- g. Conduct violative of MCR 9.104(1) and (2) in that such conduct:

is prejudicial to the proper
administration of justice; and

exposes the legal profession or the
courts to obloquy, contempt, censure or
reproach.

F.

14. The Commission informed Respondent it had authorized a formal complaint against him but would postpone its issuance if Respondent gave his timely written agreement to a psychiatric evaluation by Dr. Harvey Ager. The Respondent was further informed that, if he did not agree in writing within fourteen days of such notice, or did not appear at the scheduled appointment, the formal complaint would issue forthwith.

15. On September 13, 2002, Respondent sent the Commission a written confirmation he would appear for an evaluation with Dr. Ager on October 16, 2002 at 12:30 p.m. in Southfield, Michigan.

16. Respondent did not appear for the October 16, 2002 psychiatric evaluation with Dr. Ager. He did not timely notify either the Commission or Dr. Ager that he would not be present. Instead, Respondent sent a facsimile letter to the Commission offices on October 16, 2002, well after closing hours, which indicated he had been on sick leave the past three weeks and had been unable to attend the appointment with Dr. Ager because of Respondent's physical condition. Respondent's communication offered no explanation for his failure to

communicate with the Commission to avoid unnecessary expense and inconvenience.

17. The conduct described in paragraphs 14 – 16, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- c. Failure to submit to a mental examination requested by the Commission, contrary to MCR 9.207(G);
- d. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- f. Failure to cooperate with the Commission during a preliminary investigation, contrary to MCR 9.213(B); and
- g. Conduct violative of MCR 9.104(1) and (2) in that such conduct:

is prejudicial to the proper administration of justice; and

exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

G.

18. Because of Respondent's absence from the 62A District Court, which was attributed to illness, Regional Administrator James Hughes wrote Respondent on October 18, 2002. In that letter, Respondent was "immediately directed" to provide a physician statement indicating his expected return date to the court or, alternatively, report to court for work on Monday morning, October 21, 2002.

19. Respondent did not return to court on a regular basis and did not provide a statement from his physician as directed by Mr. Hughes.

20. On October 23, 2002, State Court Administrator John D. Ferry, Jr. wrote Respondent directing that Respondent have his physician provide a detailed statement of Respondent's condition, prognosis and expected date of return to work. Mr. Ferry's letter directed that the physician's statement be provided to the court administrator no later than November 1, 2002. The Respondent did not reply to this communication and no statement was provided by his physician.

21. The conduct described in paragraphs 18 – 20, if true, constitutes:

- a. Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;
- b. Conduct clearly prejudicial to the administration of justice, as defined by the

Michigan Constitution of 1963, Article VI, § 30, as amended, and MCR 9.205;

- c. Irresponsible or improper conduct which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;
- d. Conduct involving impropriety and the appearance of impropriety, contrary to the Code of Judicial Conduct, Canon 2A;
- e. Persistent failure to perform judicial duties or neglect in the performance of judicial duties; contrary to MCR 9.205(C)(2) and (5);
- f. Conduct violative of MCR 9.104(1) and (2) in that such conduct:

is prejudicial to the proper administration of justice; and

exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

22. The conduct described in the antecedent paragraphs is part of a pattern of inaction, delay or neglect on the part of Respondent.

Pursuant to MCR 9.209, Respondent is advised that an original verified Answer to the foregoing Complaint, and nine copies thereof, must be filed with the Commission within fourteen (14) days after service upon Respondent of the Complaint. Such Answer shall be in a form similar to the answer in a civil action in a circuit court and shall contain a full and fair disclosure of all facts and

circumstances pertaining to Respondent's alleged misconduct. The willful concealment, misrepresentation, or failure to file such answer and disclosure shall be additional grounds for disciplinary action under the Complaint.

MICHIGAN JUDICIAL
TENURE COMMISSION

By: _____
Paul J. Fischer (P35454)
Examiner
3034 W. Grand Blvd., Ste. 8-450
Detroit, Michigan 48202
(313) 875-5110

DATED: November 25, 2002

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